EXHIBIT A

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Petition of Ameritech for Forbearance from	)	CC Docket No. 99-65
Dominant Carrier Regulation of its	)	
Provision of High Capacity Services in the	)	
Chicago LATA	)	

DECLARATION OF JANUSZ A. ORDOVER AND ROBERT D. WILLIG

Pursuant to 28 U.S.C. § 1746, I, Janusz Ordover, and I, Robert Willig, declare as follows:

I. QUALIFICATIONS AND SUMMARY OF CONCULSIONS

A. Professor Ordover

1. My name is Janusz A. Ordover. I am Professor of Economics at New York University, which I joined in 1973. At New York University, I teach undergraduate and doctoral level courses in industrial organization economics, which is the field of economics concerned with competition among business firms and upon which "antitrust economics" is founded. I have devoted most of my professional life to the study and teaching of industrial organization economics and to its application through antitrust law and policy.

2. In July, 1991, I was appointed by President George Bush to the position of the Deputy Assistant Attorney General for Economics in the Antitrust Division of the United States Department of Justice ("DOJ"). In this post, I participated in

the drafting of the 1992 Horizontal Merger Guidelines, which have been widely used by courts and antitrust enforcement agencies. I returned to New York University in 1993.

3. I have written extensively on a wide range of antitrust and telecommunications topics, such as mergers and joint ventures, predatory conduct and entry barriers. My antitrust articles have appeared in the *Yale Law Journal*, the *Harvard Law Review*, the *Columbia Law Review*, and many other journals, monographs and books, here and abroad. A full list of my articles and other professional publications and activities is presented in my *curriculum vitae*, which is attached as Exhibit 1.

4. I have lectured extensively on antitrust topics to the American Bar Association, the International Bar Association, and the Federal Trade Commission ("FTC"). I recently delivered lectures to the FTC during its hearings on the Future of Antitrust Enforcement, which were organized by FTC Chairman Robert Pitofsky. I have also lectured on antitrust policy at colleges and universities in the United States and abroad, and at many conferences and meetings sponsored by various legal organizations.

5. I have acted as a consultant on antitrust and other competition matters to the DOJ, the FTC, and the post-communist governments of Poland, Russia, and

Hungary. I have also consulted for the World Bank and the Organization for Economic Cooperation and Development in Paris. I have acted as a consultant in numerous antitrust litigation and investigations, including market definition and anti-competitive conduct matters for the FTC, Department of Justice and private clients in the United States, Australia, Germany and the European Union.

B. Professor Willig

6. My name is Robert D. Willig. I am Professor of Economics and Public Affairs at the Woodrow Wilson School and the Economics Department of Princeton University, a position I have held since 1978. Before that, I was Supervisor in the Economics Research Department of Bell Laboratories. My teaching and research have specialized in the fields of industrial organization, government-business relations and welfare theory.

7. I served as Deputy Assistant Attorney General for Economics in the Antitrust Division of the United States Department of Justice from 1989 to 1991. I also served on the Defense Science Board task force on antitrust aspects of defense industry consolidation. In addition, I have been a member of policy task forces under the aegis of the Governor of New Jersey and the National Research Council.

8. I am the author of *Welfare Analysis of Policies Affecting Prices and Products*; *Contestable Markets and the Theory of Industry Structure* (with W. Baumol and J. Panzar); and numerous articles, including "Merger Analysis, IO Theory, and Merger Guidelines." I am also a co-editor of *The Handbook of Industrial Organization*, and have served on the editorial boards of the *American Economic Review* and the *Journal of Industrial Economics*. I am an elected Fellow of the Econometric Society.

9. I have been especially active in both theoretical and applied analysis of telecommunications issues. Since leaving Bell Laboratories, I have been a consultant to AT&T, Bell Atlantic, Telstra and New Zealand Telecom, and have testified before the U.S. Congress, the Federal Communications Commission, and the Public Utility Commissions of about a dozen states. I have been on governmental and privately supported missions involving telecommunications throughout South America, Canada, Europe and Asia. I have written and testified on such subjects within telecommunications as the scope of competition, end-user service pricing and costing, unbundled access arrangements and pricing, the design of regulation and methodologies for assessing what activities should be subject to regulation, directory services, bypass arrangements, and network externalities and universal service. On other issues, I have worked as a consultant with the FTC, the Organization for Economic Cooperation and Development, the Inter-American Development Bank, the World Bank and various private clients. A full list of my articles and other professional

publications and activities is presented in my *curriculum vitae*, which is attached as Exhibit 2.

II. ASSIGNMENT AND CONCLUSIONS

10. We have been asked by AT&T Corp. ("AT&T") to examine the economic analysis and the concomitant public policy conclusions contained in the Report of Debra Aron ("Aron Report") in support of the request by Ameritech Corp. ("Ameritech") that the Commission forbear from regulating Ameritech's prices for all special access services, dedicated transport for switched access, and interstate, intraLATA private line services provided throughout the entire Chicago LATA. It is our understanding that Ameritech is requesting—and Dr. Aron is supporting—a total removal of price cap regulation for these "high capacity" services in this LATA.

11. We believe that granting Ameritech's request would disserve the public interest. *First*, Ameritech has not demonstrated that the provision of special access services is now subject to effective competition. *Second*, Ameritech has not demonstrated that entry into that market is sufficiently easy that new competitors could prevent Ameritech from sustaining a nontransitory price increase. *Third*, Ameritech still has considerable market power because of its control over the bottleneck inputs necessary to provide special access and switched access services. Hence, if the Commission were to forbear from regulation of the

pertinent services, Ameritech would be profitably to impose a significant, non-transitory price increase for those services to customers in the Chicago LATA.

III. CONDITIONS FOR REGULATORY FORBEARANCE

12. Dr. Aron contends that her analysis conforms to the regulatory standard embodied in Section 10 of the Communications Act of 1934, 47 U.S.C. § 160. That section provides that the Commission may forbear from enforcing a regulation when the rates charged by the incumbent are "just and reasonable and are not unjustly or unreasonably discriminatory;" when enforcement of the regulation "is not necessary for the protection of consumers;" and when "forbearance . . . is consistent with the public interest." 47 U.S.C. § 160(a). To test whether forbearance is in the public interest, the Commission "shall consider whether forbearance . . . will promote competitive market conditions, including the extent to which such forbearance will promote competition among providers of telecommunications services." *Id.* § 160(b).

13. As economists, we agree with the Act's thrust that forbearance is in the public interest if in the absence of regulation, the incumbent cannot exercise undue market power, and if the absence of regulation will promote competition in the relevant product and geographic market. As explained below, Dr. Aron has not demonstrated that Ameritech's petition meets this standard. Dr. Aron unquestionably provides the Commission with interesting data that demonstrates that Ameritech now faces *some* facilities-based competition for *some* components

of *some* high-capacity services in *some* areas of the Chicago LATA. Nonetheless, the evidence presented by Dr. Aron does not support her unqualified conclusion that Ameritech lacks market power with respect to the relevant services in the entire Chicago LATA. Ameritech's position, we think, reflects departures from a number of fundamental methodological principles that are critical to reasoned evaluation of any incumbent local exchange carrier ("LEC") petition for forbearance from dominant carrier regulation of access and related services. We briefly address the most important of these principles before turning to the evidence submitted by Ameritech with respect to the Chicago LATA.

14. *First*, it is important to recognize that Ameritech, as the petitioner, bears the burden of proof in this proceeding—the burden to demonstrate with specific and verifiable evidence that it will be unable to exercise incremental market power with respect to any of the targeted services absent price regulation. This allocation of evidentiary burden is appropriate given the clear informational asymmetries with respect to such issues as the locations and capacities of the facilities the incumbent uses to provide special access services, the locations and the extent to which competitors have interconnected to the incumbent's network, and the extent to which "facilities-based" competitors still rely on components purchased from Ameritech. In this regard, it is particularly important that all evidence and analyses presented by the petitioner be verifiable, with data sources fully identified, methodologies fully explained, and assumptions fully disclosed. That is so because, as explained in the following paragraphs, failure to collect and

analyze the relevant data on an appropriately disaggregated basis can lead to inaccurate and misleading conclusions, and ultimately, wrong policy recommendations.

15. *Second*, the Commission should insist that the incumbent LEC demonstrate with specificity that it has lost its market power with respect to *each critical component* of the services at issue. The importance of this point cannot be overstated. Economic theory and experience both teach that a supplier of a service will have the ability to exercise market power with respect to that service if the supplier maintains market power over a *single* critical input to providing the service—even if the provision of all other components of the service is fully competitive. So long as the incumbent retains monopoly power over any such bottleneck input to special access services, for example, it can extract monopoly rents from special access customers (or from resellers who must buy the bottleneck inputs from the incumbent).

16. In this regard, it is important to recognize that special access services comprise at least two distinct components: local distribution channels ("LDCs") and dedicated transport. Bennett Dec. ¶ 5; Rowland Dec. ¶ 4. Special access connects a high volume customer directly from its premises to a long distance carrier's point of presence ("POP").[1] LDCs are the facilities used to connect a special access

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[1] The POP is the interconnection point between the local network and the long distance network.

customer to a local service office ("LSO"). Dedicated transport facilities carry calls from the LSO to the long distance carriers' POP.

17. If competing special access suppliers are to constrain the retail price of special access services to competitive market levels, there must be a competitive supply of *both* inputs. For that reason, retail market share figures are meaningless in this context.[2] An unregulated incumbent with **zero** percent of the retail special access services market could nonetheless earn monopoly rents—and ensure that retail special access service prices remain well above competitive market levels—through its control of one or more of the inputs to those services.

18. To illustrate this point, assume that a customer is willing to pay $150/month for special access. Assume also that forward-looking incremental costs for LDC and transport are $75 and $25 per month respectively.[3] The competitive price for the *service* would be $100. If an incumbent LEC controls the LDC, it can charge $125 for it and get $50 in monopoly profit, even if transport were supplied competitively at the competitive price of $25 per month. Hence, competition in the provision of transport is not sufficient to drive the price of the special access service to the consumer to the competitive level.

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[2] Retail market share measures special access services sold to actual end-user customers. Most incumbent LECs sell special access services at the wholesale level to long distance carriers, who provide retail services to customers. Very few customers have sufficient usage to purchase special access at wholesale from incumbents.

[3] Here we are abstracting from complications that arise from the fact that transport is a joint input into the provision of services to many customers.

19. *Third*, the Commission should verify that the incumbent's evidence is consistent with the geographic scope of the relief sought in the petition. That is because the existence of substantial facilities-based competition in one area cannot constrain prices of special access services in another area that is not subject to such competition. Rather, as the Commission has recognized, the services are demanded and provided on a point-to-point basis.[4] In other words, even if there were multiple facilities-based suppliers of all components of special access services in a central business district, that would not constrain an unregulated incumbent's special access rates in suburban or rural areas outside the city center in which competition is weak or nonexistent.

20. This analysis is not altered by the existence of multilocation customers. The fact that a customer may have competitive options in one part of the state will not allow that customer to obtain a competitive price in another location that is not subject to competition. An example is instructive. Assume a customer has two sites and needs a DS1 channel to each. One site is in an urban area where competition from multiple suppliers constrains rates to no more than $100/month, as compared to a monopoly rate of $150/month. The other area is served only by Ameritech. Free of regulatory constraint, Ameritech would have an incentive to charge $100/month in the competitive area (or, perhaps, $99/month to beat the

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[4] *See* Memorandum Opinion and Order, CC Docket 97-211, ¶ 166 (FCC Sep. 14, 1998) (rejecting use of state-wide geographic markets for exchange access and adopting "point-to-point markets" or markets of "discrete local areas"); Memorandum Opinion and Order, File No. NSD-L-96-10, ¶¶ 54-56 (FCC Aug. 14, 1997).

competition) and $150/month in the noncompetitive area. Because there is no alternative arrangement through which the customer can obtain better overall rates from another supplier—or combination of suppliers, such as Ameritech in the noncompetitive area and a new entrant in the competitive area—the customer cannot make a credible threat to switch and thus has no "leverage" to force Ameritech to reduce rates in the noncompetitive area. Nor can the customer gain any leverage by requesting statewide flat-rate prices. Ameritech could then simply offer a contract rate of $125/month for each of the two DS1 channels. Once again, no alternative supplier could provide a better overall rate or undermine Ameritech's ability to collect its monopoly rent.

21. Moreover, by virtue of its incumbency and ubiquity of service, an incumbent LEC free of regulatory constraints may be able to deter future entry in non-competitive areas without even lowering its rates below (possible) monopoly levels. To see how this could be accomplished, assume that some monopolistic portions of a state are presently unattractive to a potential entrant. This might be so because demand for special access in these parts of the state is not sufficiently high to warrant or support two special access providers. However, some other parts of the state could potentially sustain competition. Assume the incumbent LEC has sunk all the costs necessary to provide DS1s statewide, the incremental cost to the incumbent of providing DS1 service is $10/month per site, and the monopoly price is $150/month per site. The entrant, however, must sink some costs to provide that service and would be willing to do so only if it faced some real

possibility of recouping the investment on a forward-looking basis. However, the incumbent LEC can deter such an investment by offering customers who require special access at two sites—one in a monopolistic part of the state, and the other in a potentially competitive part of the state—the following contract: "If you purchase services at one site from me at the market price, I will provide you with the second site at (incremental) cost." The prospect of such an offer can deter entry and maintain the price of special access at the monopoly level. This is because the entrant, who can only economically serve one site, realizes that if it enters, the incumbent is essentially committed to give away the service in the competitive area. Such an entrant cannot reasonably recover its sunk costs and may abstain from coming into the market. In this case, the incumbent would be able to charge the total monopoly package price of $300 for two sites, and still entry would be foreclosed.

22. As the instant petition demonstrates, careful evaluation of the evidence submitted may reveal important service components or geographic areas covered by the petition for which there is little existing competition and the incumbent clearly remains the dominant provider. Of course, the Commission's analysis should not be confined to only the levels of existing competition. The ability of an incumbent LEC to exercise market power might also be constrained by potential competition. However, care must be taken to ensure that the analysis of entry barriers is appropriately rigorous and specific with respect to the relevant discrete service components and geographic areas. It would plainly be inappropriate, for

example, to infer from the existence of significant dedicated transport competition, or of entry in the most telecommunications dense areas of a central business district, that entry barriers for dedicated transport are low in other areas of the same LATA or in *any* area for LDCs. Instead, the Commission should require evidence of substantial entry into the provision of the specific service components and geographic areas. Alternatively, the Commission should require specific, verifiable, and conclusive evidence that where entry is not, in fact, occurring, why it would occur in a timely manner and on an efficient scale to render unprofitable any attempt by the incumbent to exercise market power if forbearance were granted.

23. *Finally*, in evaluating an incumbent LEC's claims that market forces will constrain its special access services prices in the absence of regulation, the Commission should not ignore the available direct evidence of the impact of market forces on the incumbent's pricing behavior. Specifically, where the incumbent LEC's special access services prices remain at or close to regulatory price caps, the Commission should require substantial evidence to support claims of price-constraining competition. The price caps for special access were initially established on the basis of historical costs and, we understand, far exceed the forward-looking cost-based rates that would prevail in a truly competitive market. Moreover, although the Commission's pricing regulations obviously (and quite properly) do not give incumbents total flexibility in setting rates, we nevertheless understand that incumbents do have flexibility to lower special access rates to

meet competition and to establish separate rate zones based on the costs of providing special access. We further understand that the Commission pricing regulations permit term and volume discounts so long as such offers are made available to similarly situated customers.[5] Accordingly, where incumbents have not taken advantage of the existing flexibility provided by the Commission's pricing regulations to lower rates and "meet the competition," the obvious inference is that they are not subject to effective competition over a wide range of customers so that an across-the-board price cut would be unprofitable as compared to a possible loss of a few customers. In such a case, forbearance would not serve the public interest.

IV. AMERITECH'S PETITION WOULD NOT SERVE THE PUBLIC INTEREST AND SHOULD BE REJECTED

24. Although competition clearly has begun to emerge for some components of some high capacity services in some areas of the Chicago LATA (primarily, it appears, for dedicated transport for certain high volume customers in Chicago's central business district), Ameritech falls far short of demonstrating that the broad relief it seeks would serve the public interest. The fact remains that Ameritech retains bottleneck control over essential inputs to the provision of the subject services to

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[5] Second Report and Order and Third Notice of Proposed Rulemaking, *In the Matter of Expanded Interconnection with Local Telephone Company Facilities*, CC Docket No. 91-141, ¶¶ 87-120 (FCC Sep. 2, 1993); Report and Order and Notice of Proposed Rulemaking, *In the Matter of Expanded Interconnection with Local Telephone Company Facilities*, CC Docket No. 91-141, ¶¶ 164-215 (FCC Oct. 19, 1992).

most customers. As a result, the requested deregulation not only would not promote competition, it would likely stifle any emerging competition.

A. Ameritech Has Not Provided The Information Necessary To Support Its Petition

25. Dr. Aron's analysis is largely based on undocumented and unverifiable information provided by Ameritech. For example, Dr. Aron relies on "[d]ata provided by Ameritech," but not included in its petition, to support her claims regarding the extent to which competitors in Chicago provide dedicated transport, the extent of collocation, and Ameritech's retail market share (although, as noted above, here the latter figure is, in all events, irrelevant). Aron Report at 2, 27-29. Likewise Dr. Aron's assertions are based on charts that purport to represent the extent to which competitors have facilities in place, but these charts are undocumented and unverified. *Id.*, Exhibits 1-4. As explained above, and in more detail below, these are important facts, but their meaning and accuracy cannot be evaluated without an explanation as to how they were derived.

26. The "studies" provided by Quality Strategies, a consulting firm apparently hired by Ameritech, also needs additional documentation. The authors of the studies do not verify or make any representations regarding its accuracy or even its intended use. Rather, they are simply appended to Dr. Aron's Report. Further, even a cursory examination of the Quality Strategies materials reveals that its market share methodology is largely unexplained and the data provided are both conclusory and unverifiable. This is not mere nitpicking. For example, as

explained by Mr. Rocco Degregorio in his accompanying Declaration, Quality Strategies, in estimating TCG's market share of the special access market, included special access services where essential components of that service were in fact provided by Ameritech itself.[6] Degregaroio Dec. ¶¶ 5-16.

27. Ameritech seeks extremely broad-based relief: complete deregulation of *all* high capacity services over an area that encompasses a large majority of the demand for such services in the State of Illinois. *See United States v. Western Elec. Co.*, 569 F. Supp. 990, 1038 (D.D.C. 1983) (Chicago LATA one of the largest in the country). The cost to business customers, and ultimately to the consumer customers of those businesses, of premature deregulation can be quite high. The Commission should accordingly demand full documentation of any data that a petitioner relies upon in an application for regulatory forbearance.

B. Ameritech's Ability To Extract Monopoly Rents From Special Access Customers Because Of Its Control Over Bottleneck Inputs Precludes Approval Of Its Petition

28. As noted above, both LDCs and dedicated transport are necessary inputs into the provisioning of special access services. Thus, so long as either of these inputs is not subject to effective or potential competition, Ameritech will, absent regulatory constraints, be able to charge supracompetitive prices for special access.

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[6] The full extent of these errors is discussed in AT&T's Opposition to Ameritech's Petition for forbearance.

1. Ameritech's Control of LDCs

29. Contrary to Ameritech's undocumented data, Aron Report at 21, AT&T's analysis—which, unlike Ameritech's, is documented and verified—shows that Ameritech remains the dominant provider of LDCs in the Chicago LATA. As set forth in the Declaration of Mr. Robert Polete, approximately 90 percent of AT&T's LDC expenses in the Chicago LATA are from LDCs purchased from Ameritech. Polete Dec. ¶ 13. This is not because Ameritech offers the best price among alternative suppliers, but because for most special access customers *there is no alternative to Ameritech*. Bennett Dec. ¶ 6; Rowland Dec. ¶ 4. This fact alone strongly counsels against granting the petition.

30. Unless barriers to entry are extremely low, these market share data suggest strongly that an overwhelming majority of special access customers in the Chicago LATA are captive customers that could be charged higher supra-competitive rates if Ameritech's petition were granted. And the available evidence suggests that barriers to entry in the provision of LDCs—essentially local loops to large business customers—are high enough to enable Ameritech to maintain a very high share of LDCs while charging already supracompetitive prices. *See* Polete Dec. ¶¶ 13-16. As discussed in the accompanying Declaration of Mr. Timothy Rowland, new entrants in Chicago face significant impediment to building LDCs and entering the market quickly. New entrants are charged rights-of-way fees by building owners that Ameritech was not (or is not) charged; new entrants are charged rights-of-way fees by municipal governments that Ameritech

was not (or is not) charged, or are unable to procure such rights-of-way altogether; new entrants are forced to endure lengthy waits to get municipal rights-of-ways; in many existing buildings, there is simply no space (or power) for redundant facilities even if the building owner was willing to permit them; and many building owners will not permit AT&T to perform the necessary work to connect a customer to its network but instead require AT&T to pay Ameritech for that work. Rowland Dec. ¶¶ 4-8.

31. Further, as explained by Mr. Rowland, LDCs are characterized by large fixed and sunk costs and economies of scale. *Id.* ¶ 5. Thus, for the reasons explained above, *see supra* ¶ 21, once Ameritech has wired a building with an LDC, Ameritech can forestall an entrant's parallel investment in competitive facilities by using pricing strategies that take advantage of the fact that its investment is already sunk while that of the new entrant's is not. Thus, competition for LDCs is generally limited to only the extremely high-volume users. Rowland Dec. ¶ 5, 9.

2. Ameritech's Control of Dedicated Transport Facilities

32. Although competitors have put in place dedicated transport facilities in some areas of the Chicago LATA, principally Chicago's central business district, those facilities do not provide fully effective competition to Ameritech's ubiquitous transport network. The costs of deploying the necessary dedicated transport facilities are sufficiently high so that it is economic for AT&T and other competitors to serve only the special access customers with the greatest demand.

Bennett Dec. ¶ 8. More precisely, while competitors have installed transport limited facilities at the DS3 level—the type of facilities for the largest special access customers—these facilities serve only a small fraction of the demand for these services. Competition at the DS1 level—the facilities that are used economically to serve lower-usage special access customers—is almost non-existent.

33. Here again, the data provided by AT&T suggest that Dr. Aron has significantly understated Ameritech's share of dedicated transport. Thus, although Dr. Aron claims that Ameritech supplies less than fifty percent of dedicated transport (LSO to POP) purchases at the DS1 level, Aron Report at 21, Ameritech apparently represents more than **99 percent** of AT&T's actual purchases, Polete Dec. ¶ 11. Likewise, although Dr. Aron claims that Ameritech provides only slightly more than 40 percent of dedicated transport (LSO to POP) purchases at the DS3 level, Aron Report at 21, it instead appears that Ameritech represents more than **90 percent** of AT&T's actual purchases, Polete Dec. ¶ 9. And, although Dr. Aron claims that AT&T's dependence on Ameritech has decreased substantially since AT&T's purchase of TCG, Aron Report at 20, the reality is that, despite aggressive purchasing practices AT&T has been able to shift only a small portion of its demand to alternatives suppliers, Polete Dec. ¶¶ 9-12.

C. Ameritech's Retail Share Claims

34. Dr. Aron makes much of the fact that its competitors provide 94 percent of special access services to "retail" customers.[7] Aron Report at 2, 19. We understand, however, that Ameritech provided only a small share of "retail" services even when there was no facilities-based competition in the provision of special access. This is because retail customers have traditionally relied upon their long distance providers to make the necessary special access arrangements with Ameritech, making the long distance carrier the "provider of record." Plainly, however, the long distance carrier acts as a reseller of Ameritech's monopoly services provided over Ameritech's facilities, and as such, it cannot constrain Ameritech's prices for the underlying services. In short, the fact that Ameritech provides only 6 percent of retail special access services in the Chicago LATA has no economic significance as a gauge of the extent of competition in the relevant market.

35. Dr. Aron confuses matters further by claiming she has been "conservative" by analyzing the special access and switched access markets separately, notwithstanding her belief that the two are "near perfect substitutes." Aron Report at 6-7, App. II. If her latter statement were correct, fundamental economics dictates that neither service can be properly analyzed in isolation because providers of one will significantly constrain the prices of providers of the other. However, because Ameritech's share of switched access services is likely

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[7] As noted, retail market share measures special access services sold to actual end-user customers.

even higher than of special access, Dr. Aron's methodology likely understates, rather than overstates, Ameritech's market power.

36. Moreover, the fact that switched and special access services potentially compete with each other exacerbates the public policy concerns arising from Ameritech's forbearance request. The grant of forbearance in pricing special access would make it easier for Ameritech to capture or retain more elastic customers who otherwise would have to be captured or retained with lower prices for switched access. As a result, competitive incentives for Ameritech to lower switched access rates would be reduced, in direct contravention of the Commission's policies and the public interest.

D. Ameritech Has Not Demonstrated The Existence Of Competition Throughout The Chicago LATA

37. As noted, special access services are demanded and supplied on a point-to-point basis. Accordingly, the Commission must assure that the geographic scope of any deregulation request matches the geographic scope of demonstrated price-constraining competitive alternatives—even significant competition in one part of LATA does not protect consumers in areas where little or no such competition exists. Here, Ameritech has requested broad deregulatory relief for the entire Chicago LATA—the most telecommunications intensive market in its territory. Ameritech does not even attempt to claim that price-constraining competition exists across that geographic area.

38. As discussed above, the evidence provided by AT&T demonstrates that Ameritech has greatly understated its market shares for the relevant services. However, even taking Ameritech's petition at face value, it falls well short of justifying the relief that it seeks. In a footnote in her Report, Dr. Aron concedes that "[a]ll Quality Strategies market share statistics quoted in this report are for the Chicago MSA rather than the LATA." Aron Report at 2 n.3. Thus, Ameritech has effectively conceded that it has provided *no* justification for forbearance outside the Chicago MSA. Ameritech notes that most of its revenues are derived from the MSA, but that is beside the point. Ameritech's petition would still allow it to charge monopoly rates to customers outside the MSA (and, judging by Ameritech's understatement of its market position in the MSA, to customers in the MSA as well). The fact that there may only be 1,000 of them, as opposed to 10,000, is no justification.

39. Moreover, by its own measure, Ameritech still controls over 72 percent of the special access market in the Chicago suburbs. Dr. Aron herself concedes that this high level of market share raises significant competitive concerns. Aron Report at 22.

40. Dr. Aron's response—that "evidence on collocation demonstrates that competitors already have in place facilities to serve a substantial majority [69.2%] of Ameritech's switched access minutes, including those in the suburbs," Aron

Report at 22— is, in fact, just further confirmation that Ameritech retains market power over LDC facilities and thus over special access services.

41. In this regard, it is our understanding that AT&T and other competitive access providers ("CAPs"), where it is economically and technically feasible to do so, connect customers directly to their fiber rings and thereby provide both the LDC function and the dedicated transport function. Bennett Dec. ¶¶ 4,7. However, the fact that a competitor has collocated in a particular central office does *not* mean that the competitor has put LDC facilities in place to serve special access customers.[8] Collocation is used in this context by AT&T and other competitors to connect their transport facilities to Ameritech's LDCs (in the case of special access) and local loops (in the case of switched access). Thus, as explained in the accompanying Declaration of Mr. Bruce Bennett, AT&T (like other CAPs) generally collocates in this context only in those Ameritech central offices where it cannot efficiently gain direct access to customers' premises, but instead must rely on Ameritech's LDC facilities. *Id.* ¶ 7.

42. Moreover, as set forth in the accompanying affidavit of Mr. Bennett, present collocation does not put new entrants on an equal footing in competing with Ameritech. *Id.* ¶¶ 9-12. In any collocation arrangement, AT&T is dependent upon Ameritech's cooperation in order to provide service. To date, Ameritech

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[8] In fact, it does not even mean that the entrant has made the necessary investment in the electronic equipment necessary to provide special access services. Bennett Dec. ¶ 8.

and AT&T remain at odds over the terms and conditions that are said to delay AT&T's ability to provide competitive transport services and to drive up the costs of that service. It is significant that these disputes play out in the regulatory domain, rather than inducing facilities-based competition that might undermine Ameritech's apparent dominance over LDCs.

D. Ameritech Has Not Taken Advantage Of Existing Pricing Flexibility

43. Finally, the Commission should not ignore Ameritech's own pricing conduct in assessing whether the public interest would be served by removing the remaining price cap regulation of Ameritech's special access service rates. In this regard, we understand that Ameritech continues to price special access in Chicago very close to the price cap ceiling permitted by the Commission's regulations. Polete Dec. ¶ 16. That is difficult to reconcile with Ameritech's current claims that market forces will constrain its prices to competitive levels even in the absence of regulation, given that historical-cost-based price caps are generally conceded to be well above the relevant forward-looking costs. Further, we understand that Ameritech has retained its high market share despite charging rates for special access services that are significantly higher than those charged by its special access competitors. In fact, as explained by Mr. Polete, Ameritech has *increased* its special access rates over the last three years. *Id.* ¶ 15. In light of this direct evidence, it is very difficult to credit Ameritech's undocumented and unverifiable "market share" based claims about the strength of competition.

44. There is no obvious explanation for Ameritech's maintenance of supra-competitive rates other than market power. As discussed above, we understand that Ameritech is not required to maintain average prices on a state-wide basis, but is allowed to price special access services to reflect cost differentials across metropolitan, small city, and rural zones. Moreover, we understand that the Commission has also permitted Ameritech to offer rates that reflect term and volume commitment, so long as these rates are made available to all similarly situated customers. The fact that Ameritech has not availed itself of this pricing flexibility to lower prices suggests strongly that Ameritech is not currently subject to effective competition and that the deregulation Ameritech seeks would give it the ability to raise prices (or maintain them at current supra-competitive levels) in the many areas where it faces no effective competition.

V. CONCLUSION

45. In sum, none of the explanations offered by Dr. Aron as to why Ameritech lacks market power are convincing. The available evidence suggests that the deregulation Ameritech seeks would give it the flexibility to raise prices (or maintain them at supra-competitive levels) in the many areas where it faces no effective competition. In our view, that would not serve the public interest.

VERIFICATION

Janice A Ordover

I, _____, declare under penalty of perjury that the foregoing is true and correct.

Executed on March __, 1999.

Janice A Ordover

[NAME]

VERIFICATION

I, Robert Willig, declare under penalty of perjury that the foregoing is true and correct.

Executed on March 30, 1999.